FARAD CONTINUTION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.5920 of 2005

Office Notes,Office Memorandum of Coram appearence,Court's Orders & Directors and Registrar's Order	Court or Judge's Order

Mr Manojkumar Upadhaya for peter

CORAM; A.P.SHAH J.

Dt 22.9.2005

P.C.

. Heard ld counsel for the petitinoer. Respondents and their advocate are absent despite service. This petition takes exception to the oder of the trial court dated ll.7.2005 rejecting the application for amendment of the plaint. The petitinoer is the original plaintiff. The case of the petitinoer is that respnodents have illegaly and unauthorisedly removed fencing and have taken forcible possession of an area of l5 Ares which is the subject matter of the suit. In para 2 of

the plaint plaintiff has specificaly averred that the defendants are attempting to trespass upon the property of the plaitniff by removing the fencing which divides the plot nos. l75 to l980.

. It appears that the pectitinoer made an applicatino under the provisions of the Prevention of Fragmentation and Consolidation on Holdings Act, l947 which was rejected by the authority under the said Act. Being aggrieved the petitioner filed Writ Petition No.2797 of 2005 in this court which came to be disposed by Dharmadhikari J. with liberty to the petitioner to agitate all the issues in the pending suit.

. By the amendment application the petitioner is seeking to add prayer for possession of the land. The learned trial judge,

however, rejected the applicaion on the ground that the proposed amendment would change the nature of the suit. In my opinion order or the trial court is wholly unsustainable. The amendment merely seeks to add a prayer for possession in addition to the prayer for injunction and is consistent with the pleadings. Consequently petition is allowed. The order of the trial court is set aside. Application Exh 39 stands granted. Petitioner is granted 4 weeks time to carry out amendment from the date of receipt of writ of this court by the trial court.